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31 JUL 1998

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In re Application of	:	DECISION ON
SCHWARTZ et al.	:	
Serial No.: 08/973,293	:	PETITION
PCT No.: PCT/US97/06831	:	
Int. Filing Date: 23 April 1997	:	UNDER 37 CFR 1.42
Priority Date: 23 April 1996	:	
For: SECURE POSTAGE PAYMENT SYSTEM	:	AND 1.44
AND METHOD	:	

This is a decision on the papers filed 01 December 1997.

BACKGROUND

On 23 April 1997, applicant filed international application PCT/US97/06831, which claimed priority of three earlier United States provisional applications filed 23 April 1996 and a fourth United States provisional application filed on 03 May 1996. Accordingly, the twenty month period for paying the basic national fee in the United States expired at midnight on 23 December 1997. A copy of the international application was not required because the international application was filed with the United States Receiving Office.

On 27 May 1997, the United States Receiving Office mailed an Invitation to Correct Defects in the International Application (PCT/RO/106) indicating that:

- 1) the Request filed 23 April 1997 does not comply with the signature requirements of PCT Rules 4.15 and 90.4, because it was signed by what appears to be an agent/common representative but the international application was not accompanied by a power of attorney appointing him and

2) the drawing sheets are not numbered in consecutive Arabic numerals and do not comply with the minimum margin requirements.

A review of Patent and Trademark Office records does not indicate that applicant ever provided a properly signed Request to cure the defect noted above.

On 01 December 1997, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a combined declaration and power of attorney as required under 35 U.S.C. 371(c)(4) executed by inventors Robert Schwartz, George Brookner, Fetneh Eskandari, Michael Brown, David Mechler and Douglas Heroy and by Gaye Gardner as legal representative of deceased inventor Gary Gardner, and a Fiduciary's Probate Certificate signed by a clerk of the Court of Probate, District of Milford, Connecticut. It is noted that the Fiduciary's Probate Certificate states that it is "NOT VALID WITHOUT COURT OF PROBATE SEAL IMPRESSED." The copy recorded in the Patent and Trademark Office at Reel 9101, frame 0747 does not show evidence of the seal thereon. Therefore, proof of the authority of Gaye Gardner to act as legal representative for the deceased inventor in compliance with 37 CFR 1.44 requires submission of a Fiduciary's Probate Certificate which shows that the court of probate seal was impressed thereon.

CONCLUSION

This application cannot be granted status under 37 CFR 1.42 until applicant has submitted a properly signed Request which cures the defect noted in the 27 May 1997 Invitation to Correct Defects in the International Application (PCT/RO/106). For the above reasons, the request for status under 37 CFR 1.42 is presently DISMISSED without prejudice.

If reconsideration of the merits of the status under 37 CFR 1.42 is desired, applicant is required to correct the above-noted defect within a time period of ONE (1) MONTH from the mail date of this decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UP TO A MAXIMUM OF 5 MONTHS UNDER EITHER 37 CFR 1.136(a) or (b). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

It is noted that proof of the authority of the legal representative in compliance with 37 CFR 1.44 MUST be submitted before the grant of a patent.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.


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